IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 403 of 2006

SUDHINDRA MOHAN GAUTAM
V/S
MUNICIPAL COUNCIL BARMER

Mr. AK ACHARYA, for the appellant / petitioner

Date of Order : 23.11.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant and perused the impugned judgments.

Learned Courts below have recorded the finding of fact, about there being no contract in existence, specific performance whereof could be ordered, rather it has been found that vide letter dated 13.9.88, the appellant was directed to deposit the balance amount within 30 days else the earnest money deposited shall be forfeited. This notice has been produced as Ex.14, and has been admitted by the defendants. Then it appears that there was some dispute about the measurements of the land, and the plaintiff wrote a letter on 7.10.88 that he should be allotted land measuring 49 x 25 ft., and if any lesser land is allotted, his earnest money be returned. This communication was addressed vide Ex.15 and then vide Ex.18, in the year 1993, the appellant offered to deposit the amount, and then vide Ex.2A dated 19.6.2000 again he volunteered to deposit the

amount. However, it has been found that the allotment already stood cancelled, notwithstanding this, the learned Courts below had directed the Municipality to refund the amount alongwith 12% interest.

In my view, the impugned judgments are eminently just and proper even at the cost of infraction of law in favour of the appellant.

The appeal thus, does not involve any substantial question of law. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

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